

1 MR. ARNTZ: No. We would only renew  
2 our motion and objections as they reflect in the  
3 earlier record.

4 THE COURT: Anything further?  
5 I will do this and the rest  
6 of it is a wrap up. We'll go from there.

7  
8 BEFORE THE JURY

9 THE COURT: Ladies and gentlemen of the  
10 jury, it's been brought to the Court's attention, and  
11 I want to make sure this is very clear on the  
12 definition of Counts One and Two.

13 Before you can find the  
14 defendant guilty, you must find beyond a reasonable  
15 doubt that Weston Lee Howe, Junior, on or about the  
16 22d day of June, 1992, and in Montgomery County, Ohio,  
17 purposely caused the death of Mark McDonald in Count  
18 One, and a separate and distinct count, Count Two,  
19 Richard Blazer, while the defendant was committing or  
20 attempting to commit or fleeing immediately after  
21 committing or attempting to commit an aggravated  
22 robbery. I want to make sure you got that. Again,  
23 that definition applies to Counts One and Two.

24 Your initial conduct upon  
25 entering the jury room is a matter of importance. It

1 is not wise immediately to express a determination to  
2 insist upon a certain verdict. Because if your sense  
3 of pride is aroused, you may hesitate to change your  
4 position even if you decide you are wrong. Consult  
5 with one another, consider each other's views and  
6 deliberate with an objective of reaching an agreement,  
7 if you can do so without disturbing your individual  
8 judgment. Each of you must decide this case for  
9 yourself, but you should do so only after discussion  
10 and consideration of the case with your fellow jurors.

11 Do not hesitate to change  
12 an opinion if convinced that it is wrong. However,  
13 you should not surrender an honest conviction in order  
14 to be congenial or to reach a verdict solely because  
15 of the opinions of other jurors.

16 Now as you know, an  
17 alternate has been selected, and you will be excused  
18 in just a minute. But you are cautioned not to  
19 discuss the case until it's all over. You got to hear  
20 that again. It's important that you not discuss the  
21 case with anyone until after a verdict is returned,  
22 and this includes any court personnel, any news media,  
23 anybody. And Shirley will give you the necessary  
24 instructions in just a couple of minutes.

25 After you retire, select a

1 foreman or forelady, and whenever all 12, and I  
2 repeat, all 12 jurors agree upon a verdict or verdicts  
3 in this situation, you will sign the verdicts in ink  
4 and advise the bailiff by pushing the buzzer. You  
5 will then be returned to the courtroom.

6 The Court at this point in  
7 time will place in your possession the exhibits and  
8 the verdict forms. The foreman or forelady will  
9 retain possession of these records, including the  
10 verdicts, and return them to the courtroom at that  
11 time. The foreman or forelady will see that your  
12 discussions are orderly and that each juror has the  
13 opportunity to discuss the case and to cast his or her  
14 vote, otherwise, the authority of the foreman or  
15 forelady is the same as any other juror.

16 Until your verdicts are  
17 announced in open court, you are not to disclose to  
18 anyone else the status of your deliberations or the  
19 nature of your verdict.

20 You may now commence your  
21 deliberations.

22 Counsel will be responsible  
23 to make sure that all the exhibits are there that have  
24 been admitted into evidence. And you may not see a  
25 precise continuous numerical sequence of exhibits.

1 You will have all the exhibits that have been admitted  
2 into evidence.

3 I know what's going through  
4 your mind.

5 A JUROR: What about lunch?

6 THE COURT: Go back there, elect the  
7 foreman and let us know what you want to do, whether  
8 you want to start your deliberation or, or whether you  
9 want to recess for lunch. You let us know.

10 You may commence your  
11 deliberations.

12 (WHEREUPON, a recess was taken at the hour  
13 of 1:15 p.m.)

14  
15 IN OPEN COURT - BEFORE THE JURY

16 1:23 p.m.

17 THE COURT: Ladies and gentlemen of the  
18 jury, first of all, have you elected a foreman?

19 MS. WHITE: Yes.

20 THE COURT: Who is that person?

21 MS. WHITE: I am Lisa White.

22 THE COURT: Yes, ma'am. It's my  
23 understanding, Ms. White, that you want to go to  
24 lunch.

25 MS. WHITE: Yes, very much so.

1 THE COURT: That's understandable. So  
2 what we will do -- is one hour sufficient? Did you  
3 want a little more, little less?

4 MS. WHITE: We would like to come back  
5 at 12:30.

6 THE COURT: All right. What we'll do  
7 then is you're going to have to hear this one more  
8 time. You'll be recessed for lunch until 2:30. While  
9 you're at lunch you may not discuss the case among  
10 yourselves or with anybody else. Stay away from any  
11 news media. Now remember, you can go to lunch. If  
12 some of you made friends together, you can go to lunch  
13 together, couple go one place or however you want to  
14 do it. While you're at lunch do not discuss the case  
15 among yourselves. When you get back into the jury  
16 room and all 12 of you are back in the jury room,  
17 that's when you can discuss the case, okay. Again, it  
18 makes sense. You're a group of 12. And if some of  
19 you go one place and a couple of you go somewhere else  
20 and you are talking about the case, you are not  
21 discussing the matter as a group of 12. Now when all  
22 12 are returned, when you're all back in the jury  
23 room, you won't have to be brought back into the  
24 courtroom, then just simply buzz on the buzzer, we'll  
25 bring the exhibits to you at that point and you can

1 commence your deliberations.

2 One other caution, when  
3 you're back in the jury room, and let's say you're  
4 waiting on one juror, got to wait for all 12, don't  
5 start discussing the case until all 12 are back in the  
6 jury room.

7 So with that then, we'll go  
8 ahead and we'll shoot for 2:30. Everybody back by  
9 2:30, you may then continue your deliberations at that  
10 point. And have a nice lunch.

11  
12 (WHEREUPON, a luncheon recess was taken.)

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1 (March 3, 1993 - Afternoon Session)

2 5:05 p.m.

3 IN CHAMBERS

4 THE COURT: Let the record reflect we  
5 are in chambers out of the presence of the jury.

6 First of all, does the  
7 defense counsel waive the defendant's right to be  
8 present for this brief discussion on the record?

9 MR. ARNTZ: Yes, we would.

10 THE COURT: Let the record further  
11 reflect what will be eventually be marked as Court's  
12 Exhibit IV will be received by the Court and it,  
13 specifically, it's presumably a request for the  
14 testimony to be reread, for the testimony of Tom  
15 Lawson to be reread to the jury, the testimony  
16 relating to the direct and cross-examination of what  
17 Howe said in front of he and Spells. That's in  
18 quotes.

19 After consulting with the  
20 attorneys, the defendant objects to the reading of the  
21 testimony. The prosecution has no objection to the  
22 reading of the testimony. The Court will simply  
23 advise the jury that they must rely on their  
24 collective memories as to the testimony of any one  
25 witness because to reread or to read the testimony

1 from the record would unduly highlight a portion of  
2 the testimony over the testimony of other witnesses.

3 Now with that said, it's  
4 the Court's understanding that counsel for the  
5 defendant and the State have no objection to the Court  
6 simply advising the jury of this ruling at the jury  
7 room on the record without them being present. So we  
8 can find out what their desires are as to whether or  
9 not they want to continue to deliberate this evening.

10 Am I correct on that Mr.  
11 Arntz?

12 MR. ARNTZ: Yes, that's correct.

13 MR. SLAVENS: That is correct. But I  
14 think the record should reflect that it now is 5  
15 o'clock and the jury had previously before the  
16 question about Detective Lawson asked to be permitted  
17 to leave at 5 o'clock and resume tomorrow morning,  
18 that's why we are doing that all at one time.

19 THE COURT: Therefore, when we bring  
20 them back into the courtroom or into the courtroom, we  
21 will ask if they're going to keep deliberating, there  
22 is no point in bringing them back into the courtroom.

23 MR. SLAVENS: If they want to go home,  
24 bring them in and let them go home.

25 THE COURT: Just let us know, right.



1 (WHEREUPON, a discussion was held off the  
2 record.)

3 THE COURT: Let the record reflect that  
4 after consultation with counsel, the Court will bring  
5 the jury in, answer the --

6 MR. SLAVENS: Lawson question.

7 THE COURT: -- Lawson issue and then  
8 send the jury home for the evening. We will  
9 reconvene, with the agreement of the lawyers, at 8  
10 o'clock tomorrow morning. The jury to commence  
11 deliberations without physically coming back into the  
12 courtroom for further instructions.

13  
14 IN OPEN COURT - BEFORE THE JURY

15 5:11 p.m.

16 THE COURT: Good afternoon, ladies and  
17 gentlemen of the jury. Dealing with first things  
18 first, the Court has in its possession a request that  
19 has been now marked as Court Exhibit IV regarding the  
20 testimony of Detective Lawson as it relates to what  
21 may or may not have been said by the defendant Howe in  
22 front of he and Detective Spells.

23 You're going to have to rely  
24 on your collective memories as it relates to the  
25 testimony of not only Detective Lawson but any

1 witness. The reason that the Court will not read back  
2 to you that testimony is that it would emphasize that  
3 testimony above and beyond anyone else's testimony and  
4 call undue attention to one portion of the trial over  
5 to the detriment or at least potential detriment of  
6 other portions of trial. So the bottom line is, you  
7 cannot get that testimony read to you. You must rely  
8 on your collective memories as to what was said.

9 Now, what we are going to  
10 do is go ahead and recess now for the evening. The  
11 usual instruction again applies and, that is, you are  
12 not permitted to discuss the case among yourselves or  
13 with anybody else. Remember, you are in a very  
14 sensitive part of the trial at this point because you  
15 are in the middle of deliberations. If anything  
16 happens in the course of the evening that you feel you  
17 should bring to our attention, feel free to do so  
18 immediately tomorrow morning and it will be dealt  
19 with. Again, keep away from any news media coverage  
20 whether it be radio, television, or newspaper. Do not  
21 do any investigation on your own. You're not  
22 permitted to go out and investigate on your own at  
23 this point or at any point but I'm really emphasizing  
24 it now.

25 I assume you would rather

1 have me send you home than to put you in a little nice  
2 downtown hotel. In any event, with that in mind, the  
3 same instructions that we went through at lunch apply  
4 now.

5 Tomorrow morning when you  
6 appear and I believe it's 8 o'clock was the requested  
7 time, am I correct on that?

8 THE JURY: (Nodding.)

9 THE COURT: You will convene tomorrow  
10 morning at 8 o'clock. When all 12 of you have  
11 convened, simply give us a buzz on the buzzer, we'll  
12 bring the exhibits in and then you may commence your  
13 deliberations. Do not discuss the case until all 12  
14 of you are present in the jury room.

15 So with that then, we'll go  
16 ahead and take our evening recess. And again, you are  
17 cautioned again very heavily not to discuss the case  
18 among yourselves with anybody else until you reconvene  
19 here tomorrow at 8 o'clock.

20 Anything from the State?

21 MR. SLAVENS: Nothing, your Honor.

22 THE COURT: Anything further from the  
23 defendant?

24 MR. ARNTZ: Nothing, your Honor.

25 THE COURT: We will stand in recess,

1 reconvening tomorrow morning at 8 a.m.

2 Is there anything further from the defendant?

3 MR. ARNTZ: No.

4 THE COURT: From the State?

5 MR. SLAVENS: Nothing, your Honor.

6 (WHEREUPON, the jury was excused for the  
7 evening.)

8 IN CHAMBERS

9 THE COURT: Let the record reflect we  
10 are in chambers. Present are all counsel.

11 Does the defense waive,  
12 counsel waive the defendant's right to be here?

13 MR. ARNTZ: Yes, we would.

14 THE COURT: Assuming he has the right  
15 for this little discussion.

16 Let the record reflect that  
17 it's March the 3rd, the jury has been excused for the  
18 evening on the record and will be reconvening tomorrow  
19 March the 4th at 8 a.m.

20 Defense counsel have  
21 advised the Court that they are in Cincinnati  
22 approximately 45 miles south of the courthouse in  
23 Dayton at a, what's called a death penalty seminar  
24 that commences tomorrow morning and is scheduled to go  
25 all day tomorrow and all day Friday. That this

1 seminar had been prepaid and numerous other arguments  
2 made on their behalf to permit them to attend.

3 Obviously, with the jury  
4 returning at 8 o'clock under the guidelines that we've  
5 now set down, it's not necessary for counsel to be  
6 here at that point in time. Counsel has agreed to be  
7 available at all times at the seminar through a phone  
8 number provided to the Court and if necessary, contact  
9 can be made by phone and records made of any questions  
10 or any discussions that need to be done can be done on  
11 the record with counsel being down in Cincinnati and  
12 the prosecutor being either at their phone or here in  
13 chambers.

14 The question has come up as  
15 to whether or not what happens at lunch when the jury  
16 wants to be recessed for the noon hour assuming that  
17 happens. And it's been agreed upon by all counsel  
18 that the Court would simply go to the jury room,  
19 instruct them as previously done today and this  
20 evening as to their job during the lunch recess  
21 thereby eliminating the necessity of the defense  
22 counsel returning from Cincinnati, the need to bring  
23 the defendant over from the County Jail and the need  
24 for the prosecuting attorney to be present at that  
25 time. And it's the Court's understanding that this

1 procedure is agreeable to the State. Is that correct,  
2 Mr. Slavens?

3 MR. SLAVENS: Yes, your Honor.

4 THE COURT: And it's also been  
5 requested and agreed to by the defense, is that  
6 correct?

7 MR. ARNTZ: Yes, it is.

8 THE COURT: All right. Now on any of  
9 these issues, is there anything further that we need  
10 to put into the record at this time?

11 MR. ARNTZ: Nothing that I know of.

12 MR. SLAVENS: Makes no difference to me.  
13 I don't know if the Court has stated when the Court  
14 does go, if there is a noon time break, which the jury  
15 may do so any time they so request, is the Court  
16 planning to do that on or off the record?

17 THE COURT: No, that will be on the  
18 record but out of the presence of all counsel and the  
19 defendant. Simply, the Court will just excuse the  
20 jury for the lunch recess and reconvene at a  
21 designated time with the usual instructions about not  
22 discussing the case until they're all together as a  
23 group of twelve. And we'll proceed accordingly.

24 We are done.  
25

1 (WHEREUPON, the proceedings for March 3,  
2 1993, were concluded at the hour of 5:25 p.m.)

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1 (March 4, 1993 - Afternoon Session)

2 12:30 p.m.

3  
4 IN THE JURY ROOM

5 THE COURT: Let the record reflect that  
6 the jury has inquired about lunch. It's now  
7 approximately 12:30 and the Court will go ahead and send  
8 the jury to lunch with the instructions to return at  
9 1:00 to continue deliberations. Obviously, if you are  
10 all twelve here before the 1:00 hour, go ahead, start  
11 your deliberations but you will have to buzz us. We are  
12 going to have to deal with all the exhibits. I just  
13 forgot about those.

14 A JUROR: Can they lock them up?

15 THE COURT: We'll deal with the  
16 exhibits.

17 A JUROR: If one of us stays in here.

18 THE COURT: (Shook head in the  
19 negative.)

20 A JUROR: 'Cause you have to take  
21 them along.

22 THE COURT: Now remember, we are on the  
23 record here. So when you ask me questions, remember  
24 Joyce has to know who's speaking.

25 We'll have to remove the



1 exhibits and then bring them back when you are all  
2 here.

3 Now remember the usual  
4 instruction from the Court not to discuss the case  
5 among yourselves or with anybody else, unless all  
6 twelve are present. If you decide to split up going  
7 to lunch, that's fine, just don't talk about the case  
8 until all twelve of you are back in the jury room and  
9 then you can commence your deliberations.

10 Now, let the record reflect  
11 the Court is going to permit the jury to have a brief  
12 discussion in view of the last series of questions.

13 Off the record.

14  
15 (WHEREUPON, a discussion was held off the  
16 record and then the jury was recessed for lunch.)

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1 (March 4, 1993 - Afternoon Session)

2 4:32 p.m.

3 IN OPEN COURT - OUT OF THE PRESENCE OF THE JURY

4 THE COURT: Before the jury comes in,  
5 obviously, this has been a lengthy trial. There's  
6 been a lot of feelings on both sides. Obviously,  
7 remember we are in a courtroom. I would expect all  
8 the spectators to simply respectfully react quietly to  
9 yourselves whichever way the verdict goes. That's all  
10 I hope I need to say to an intelligent group of  
11 people.

12 So let's bring the jury in.

13 BEFORE THE JURY

14 THE COURT: Ladies and gentlemen of the  
15 jury, have you reached a verdict or verdicts?

16 MS. WHITE: We have, your Honor.

17 THE COURT: Would you hand the verdict  
18 forms to the bailiff, please.

19 I'm trying to get these in  
20 order is what I'm doing.

21 All right. The Court has  
22 examined the verdicts and all the verdict forms have  
23 been signed by all twelve members of the jury.

24 Would the bailiff read the  
25 verdicts, please. And this will be in order from

1 Count One through Count 5.

2 THE BAILIFF: Case No. 92-CR-1673 State  
3 of Ohio against Weston Lee Howe, Jr. Count One,  
4 aggravated murder, Mark McDonald. We, the Jury, upon  
5 the issues joined in this case, do find the defendant,  
6 Weston Lee Howe, Jr., not guilty of the offense of  
7 aggravated murder as charged in the indictment and/or  
8 not guilty of the lesser included offense of  
9 involuntary manslaughter.

10 As you say, signed by  
11 twelve members of the jury.

12 Same case number and  
13 caption, Count Two, aggravated murder, Richard Blazer.  
14 We, the Jury, upon the issues joined in this case, do  
15 find the defendant, Weston Lee Howe, Jr., guilty of  
16 the offense of aggravated murder as charged in the  
17 indictment and/or not guilty of the lesser included  
18 offense of involuntary manslaughter.

19 Count Three, aggravated  
20 robbery, Mark McDonald. We, the Jury, upon the issues  
21 joined in the case, do find the defendant, Weston Lee  
22 Howe, Jr., not guilty of the offense of aggravated  
23 robbery as charged in the indictment.

24 Count Four, aggravated  
25 robbery, Richard Blazer. We, the Jury, upon the

1 issues joined in the case, do find the defendant,  
2 Weston Lee Howe, Jr., guilty of the offense of  
3 aggravated robbery as charged in the indictment.

4 THE COURT: There is a firearm spec on  
5 that.

6 THE BAILIFF: Just that one.

7 THE COURT: Well, go back. Read that  
8 one.

9 THE BAILIFF: I'm sorry. Yes, okay.

10 THE COURT: You weren't going to do any  
11 of the firearms spec? You were going to go back?  
12 Let's do it the way you were doing it.

13 THE BAILIFF: Count Five, aggravated  
14 burglarly, Richard Blazer. We, the Jury, upon the  
15 issues joined in the case, do find the defendant,  
16 Weston Lee Howe, Jr., guilty of the offense of  
17 aggravated burglary as charged in the indictment.

18 Now I will go back to Count  
19 Two, firearm specification. We, the Jury, upon the  
20 issues joined in the case having found the defendant  
21 Weston Lee Howe, Jr. guilty of Count Two, do hereby  
22 further find that he did not have on or about his  
23 person or under his control a deadly weapon, to-wit: a  
24 firearm while committing said offense.

25 Count Four, firearm

1 specification. We, the Jury, upon the issues joined  
2 in this case having found the defendant, Weston Lee  
3 Howe, Jr. guilty of Count Four, do hereby further find  
4 that he did not have on or about his person or under  
5 his control a deadly weapon, to-wit: a firearm while  
6 committing said offense.

7 Count Five, firearm  
8 specification. We, the Jury, upon the issues joined  
9 in this case having found the defendant Weston Lee  
10 Howe, Jr. guilty of Count Five, do hereby further find  
11 that he did not have on or about his person or under  
12 his control a deadly weapon, to-wit: a firearm while  
13 committing said offense.

14 Members of the jury, you've  
15 heard the reading of these verdicts, if these are your  
16 verdicts, please signify by saying aye?

17 THE JURY: Aye.

18 THE COURT: Does either the State or  
19 the defendant desire the jury polled?

20 MR. SLAVENS: We do not, your Honor.

21 THE COURT: Defendant?

22 MR. ARNTZ: No, sir. Thank you.

23 THE COURT: All right. The Court will  
24 accept the verdicts and keep them here for all counsel  
25 to examine. Let me see them one more time here.

1 THE BAILIFF: Yes, sir.

2 THE COURT: Before the jury is formally  
3 excused, could I see counsel at the side for just a  
4 minute.

5 AT SIDE BAR

6 THE COURT: Let the record reflect that  
7 the verdict as to Count Two, aggravated murder,  
8 Richard Blazer reads as follows: We, the Jury, upon  
9 the issues join in this case do find the defendant,  
10 Weston Lee Howe, Jr., guilty of the offense of  
11 aggravated murder as charged in the indictment and/or  
12 not guilty of the lesser included offense of  
13 involuntary manslaughter. In view of the other  
14 verdicts, taking them as a whole, the intent, in this  
15 Court's mind, is clear that the verdict is one of  
16 guilty. And I'm suggesting to counsel as to how we  
17 clarify this now before the jury is actually  
18 physically removed from the courtroom.

19 First of all, let's go in  
20 order. The State, do you have any suggestions other  
21 than to poll the jury at this point?

22 MR. SLAVENS: No. I think it would be  
23 the appropriate way to do it, really.

24 MR. ARNTZ: I think our position at  
25 this point is that the verdict is a nullity, it's

1       ambiguous on its face and we object to the Court  
2       attempting to modify the verdict form in the fashion  
3       suggested. We believe that count has been mistried.

4               THE COURT:           All right. Obviously,  
5       these are legal issues that we can deal with later.

6                       Let me ask counsel this  
7       question. Do we want to take a brake? We want to  
8       just launch right into this?

9               MR. SLAVENS:        I think you need to do it  
10       now.

11               THE COURT:        Once the jury is out of  
12       here, they're released from the admonition, then  
13       perhaps the problem becomes much more severe. So  
14       whatever, whether Mr. Arntz is right or wrong at this  
15       point, if he's wrong, this clarifies it. If he's  
16       right, it makes no difference. Sorry, but that's my  
17       analytical training coming through. I will launch  
18       forth here and hopefully not create any problem, it's  
19       not intended.

20               MR. ARNTZ:        Okay. The record should be  
21       clear we object to the Court commenting on this  
22       particular verdict in Count Two at this time in any  
23       fashion.

24               THE COURT:        I understand that.  
25                       Anything for the record now

1 again before I do this, Mr. Slavens?

2 MR. SLAVENS: I think it's something that  
3 has to be clarified or otherwise we'll be looking at a  
4 new trial.

5 THE COURT: Shirley, we'll eventually  
6 have to poll the jury. You're on notice.

7 BEFORE THE JURY

8 THE COURT: Ladies and gentlemen of the  
9 jury, Count Two, aggravated murder, (Richard Blazer),  
10 the verdict form reads as follows: I will read  
11 verbatim what it says. We, the Jury, upon the issues  
12 joined in this case, do find the defendant, Weston Lee  
13 Howe, Jr., guilty of the offense of aggravated murder  
14 as charged in the indictment and/or not guilty of the  
15 lesser included offense of involuntarily manslaughter.

16 My question that will be  
17 asked of you, and the bailiff will individually poll  
18 each juror, is your verdict of aggravated murder one  
19 of guilty? I'm going to repeat it. Is your verdict  
20 for the offense of aggravated murder one of guilty?  
21 You answer that question yes or no.

22 Does anybody have any  
23 question about the question that's going to be asked  
24 of you? I see no hands but I want to make sure that  
25 there is no problem. Now juror number 7 has raised



1 his hand.

2 MR. SCHAFER: I would like you to repeat  
3 the whole question again.

4 THE COURT: Would you read it back,  
5 Joyce.

6 (WHEREUPON, the Court Reporter read back the  
7 question.)

8 THE COURT: I read the whole verdict as  
9 I'm reading it now.

10 I think what we are going  
11 to have to do, ladies and gentlemen, is give you back  
12 this verdict form, send it back to the jury room. If  
13 you have any questions about the verdict form, put it  
14 in writing, submit it to the Court. Let's do it that  
15 way.

16 MR. SLAVENS: May we approach one moment,  
17 your Honor?

18 THE COURT: You may.

19 AT SIDE BAR

20 THE COURT: Let the record reflect the  
21 Court is going to submit all verdict forms back to the  
22 jury with the instruction to examine the one verdict  
23 form, or any others they want to examine for that  
24 matter. Now I think I got to do them all. And  
25 encourage them to ask any question they may have as it

1 relates to this one verdict form, Count Two,  
2 aggravated murder. Any questions they may have as it  
3 relates to the verdicts forms.

4 Any objection by the State  
5 or suggested procedure?

6 MR. SLAVENS: Since you've only inquired  
7 as to, to Count Two, I think that's the only one that  
8 should go back with them.

9 THE COURT: Mr. Arntz.

10 MR. ARNTZ: I think our position is  
11 that we object to any of the forms going back to them.

12 THE COURT: All right. In order to  
13 keep this as simple as possible, again, the Court  
14 reemphasizes it is clear to the Court what I think  
15 their intent is, however, we've got to be sure in a  
16 situation like this. Obviously, the defense's  
17 objection is noted. I will send Count Two verdict  
18 form back to the jury and encourage a question, if  
19 they have it. Not being conducted here in open court  
20 in front of everybody. Okay.

21 BEFORE THE JURY

22 THE COURT: Now, what the Court is  
23 going to do is the following, and, Mr. Schafer, I want  
24 to assure you, I understood the intent of your  
25 question. What I'm going to do though is send the

1 verdict form, Count Two, aggravated murder, Richard  
2 Blazer, back to the jury room with you. Examine the  
3 verdict form. If you have any questions at all, I  
4 encourage you to ask the Court in writing so it can be  
5 made a part of the record. If you have no questions,  
6 you need not ask any questions. Obviously, there is a  
7 little bit of confusion here the way this is worded,  
8 the way the answers are written on this form. Please  
9 advise the Court either in the form of a question for  
10 your clarification or if there is none, simply say,  
11 Judge, that's the way we decided, that's our verdict.  
12 But look at the form. Remember the question that the  
13 Court asked you. Again, I'm going to send you back  
14 and take your time now.

15 Now we will stand in  
16 recess.

17 (WHEREUPON, a recess was taken at the hour  
18 of 4:53 p.m.)

19 IN CHAMBERS

20 THE COURT: Let the record reflect we  
21 are out of the presence of the jury. The jury is now  
22 back in the jury room.

23 Mr. Arntz.

24 MR. ARNTZ: We would like the record to  
25 reflect that we object to the comments which the Court

1 just made to the jurors to the effect that there is  
2 some confusion about their jury verdict form as to  
3 Count Two and that they are encouraged to go back into  
4 the deliberation room and clarify that particular  
5 verdict. We feel that those remarks were improper and  
6 prejudicial to our client at this stage.

7 MR. SLAVENS: How is it?

8 MR. ARNTZ: Well, it indicates that the  
9 Court is critical of the verdict which they have  
10 returned and --

11 THE COURT: Well, my words are going to  
12 speak for themselves on the record. And I think the  
13 record in view of the any reviewing body that looks at  
14 this will understand why the Court was, was saying  
15 what it was saying. But whatever was said, those  
16 words will speak for themselves. And we will just  
17 have to go from there.

18 MR. MONTA: I think that's our  
19 position.

20 (Pause in the proceedings.)

21 THE COURT: Okay. The Court is going  
22 to respond to the jury's question which has been  
23 marked Court's Exhibit VI. The question speaks for  
24 itself. Signed by the foreperson. The response is  
25 signed by the Court and states as follows: If the

1 defendant is found guilty of aggravated murder, you do  
2 not answer the question on involuntary manslaughter.  
3 Period. Signed by the Court.

4 Mr. Arntz.

5 MR. ARNTZ: We renew our objection to  
6 the Court soliciting further input and questions from  
7 the jury with regard to their verdict on this count.  
8 And we also object to the Court answering the question  
9 which came back from the jury in any fashion.

10 THE COURT: The objection is so noted.

11 (WHEREUPON, in-chambers proceedings were  
12 then concluded.)

13 IN OPEN COURT - BEFORE THE JURY

14 5:13 p.m.

15 THE COURT: Good afternoon again.

16 Pursuant to the Court's  
17 instructions, the jury returned to deliberate, came  
18 back to the Court with a question, the question was  
19 then answered. And the jury, as I understand it, is  
20 prepared to have the Court announce that verdict with  
21 a little more clarity. Am I correct on that,  
22 Ms. White?

23 MS. WHITE: Yes.

24 THE COURT: Would you hand the form  
25 please to the bailiff.

1 All right. Let the record  
2 reflect that the verdict in Count Two, aggravated  
3 murder, Richard Blazer, reads as follows: We, the  
4 Jury, upon the issues joined in this case, do find the  
5 defendant, Weston Lee Howe, Jr., guilty of the offense  
6 of aggravated murder as charged in the indictment.

7 Now with that, ladies and  
8 gentlemen of the jury, is that your verdict in Count  
9 Two as it relates to Richard Blazer? We are going to  
10 do this one at a time to make sure there is no  
11 question about it.

12 Shirley, would you poll the  
13 jury?

14 THE BAILIFF: Yes, sir.

15 As I call your names if  
16 this is your verdict, please answer yes. If it not,  
17 please say no.

18 Karen Balsbaugh?

19 MS. BALSBAUGH: Yes.

20 THE BAILIFF: Harley Rice?

21 MR. RICE: Yes.

22 THE BAILIFF: Lisa A. White?

23 MS. WHITE: Yes.

24 THE BAILIFF: Gregory O'Leary?

25 MR. O'LEARY: Yes.

1 THE BAILIFF: Jeffrey Wright?

2 MR. WRIGHT: Yes.

3 THE BAILIFF: Katherine Holbrook?

4 MS. HOLBROOK: Yes.

5 THE BAILIFF: Lawrence Schafer?

6 MR. SCHAFFER: Yes.

7 THE BAILIFF: Cheryl Oliver?

8 MS. OLIVER: Yes.

9 THE BAILIFF: Steven Pugh?

10 MR. PUGH: Yes.

11 THE BAILIFF: Cornelia Merriman?

12 MS. MERRIMAN: Yes.

13 THE BAILIFF: Sara Bond?

14 MS. BOND: Yes.

15 THE BAILIFF: Richard Price?

16 MR. PRICE: Yes.

17 THE COURT: All right. Ladies and

18 gentlemen of the jury, what the Court will do at this

19 point in time is accept the verdicts as rendered,

20 ordered them be filed.

21 And you will now be excused

22 from jury service. Now a couple of words of caution,

23 and I know that the hour is getting a little late,

24 number one, you're now released from the instruction

25 that you are not permitted to discuss the case either

1 among yourselves, which you've obviously done, you may  
2 discuss the case with anyone you want to, that may  
3 include the lawyers, it may include interested people  
4 such as members of the news media. You don't have to  
5 talk to anybody that you don't want to talk to. It's  
6 as simple as that. If you don't mind talking or you  
7 want to talk, that is your choice. In other words,  
8 you call it if you want. I don't know even if they  
9 want to talk to you, okay. All I'm saying is it's  
10 your decision to make as to who you talk to or who you  
11 don't talk to about this situation.

12 Now you're released and  
13 with the thanks of myself directly, I'm sure of the  
14 lawyers, and this court staff. I want to thank you.  
15 This has been a long trial, much longer than we  
16 originally anticipated, as you know. And I want to  
17 thank you again on behalf of Montgomery County and the  
18 State of Ohio for your service as jurors. You will be  
19 excused. You are no longer obligated to do anymore  
20 time in terms of your jury service.

21 I would like to ask you to  
22 do one thing and this I guarantee you, if you go back,  
23 when you go back to the jury room, if you would wait  
24 just a minute. I've got your letters to bring you. I  
25 just want to have a couple of minutes and I will be



1 right there. I assure you this is not a 15 minute  
2 proposition. I will be right back. And if you have  
3 to run, go ahead. I understand. But remember what  
4 I've said, if you don't want to talk with anybody,  
5 that's your choice. You might want to wait because  
6 there may be a couple of things that I can answer for  
7 you in terms of a couple of questions. Couple things  
8 I want to mention to you that don't involve the actual  
9 situation here.

10 So we'll stand in recess.  
11 I will be back in just a minute.

12 (WHEREUPON, the jury was excused from the  
13 courtroom at the hour of 5:18 p.m.)

14 THE COURT: Let the record reflect that  
15 the defendant has been convicted of the offense of  
16 aggravated murder on Count Two, aggravated robbery in  
17 Count Four, and aggravated burglary in Count Five of  
18 the indictment. The Court will set the sentencing of  
19 the defendant for one week from today which is March  
20 the 11th at 9 a.m. Bond will be revoked.

21 And if there is nothing  
22 further, we'll stand in recess.

23 Mr. Slavens?

24 MR. SLAVENS: No, nothing further, your  
25 Honor.

1 THE COURT: Mr. Arntz or Mr. Monta?

2 MR. ARNTZ: No.

3 MR. MONTA: No.

4 THE COURT: March the 11th, 9 a.m.

5 Like I indicated, the bond  
6 is revoked.

7

8 (WHEREUPON, the proceedings for March 4,  
9 1993, were then concluded at the hour of 5:19 p.m.)

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1 (March 11, 1993 - Morning Session)

2 10:05 a.m.

3  
4 IN OPEN COURT

5 THE COURT: Mr. Slavens, would you call  
6 the case?

7 MR. SLAVENS: Yes, your Honor.  
8 If it please the Court,  
9 this is Case Number 92-CR-1673, caption, Ohio vs.  
10 Weston Lee Howe, Jr. Mr. Howe is present today with  
11 his counsel. We are here in court for sentencing and  
12 the conclusion of previous matters relating to Count  
13 Six of the indictment which the defendant is charged  
14 with having weapons under disability.

15 THE COURT: Well, taking first things  
16 first, it's the Court's understanding there is going  
17 to be a stipulation that is going to be entered  
18 between the State and the defendant, is that correct?

19 MR. SLAVENS: That is my understanding.  
20 As it relates to Count Six  
21 that there is a stipulation to the effect that this  
22 defendant, Weston Lee Howe, Jr., also known as Lee  
23 Weston Howe, Jr., in Case Number 86-CR-1349, in the  
24 Montgomery County Common Pleas Court was convicted of  
25 the offense of robbery and that said conviction

1 occurred on or about October 29, 1986, at which time  
2 he was before Judge MacMillan and represented by  
3 William Fisher and the prosecuting attorney was  
4 Mr. Patrick Adkins. And those items also, your Honor,  
5 relates to Count Four, Five, and Six of the  
6 indictment.

7 THE COURT: What about Count Two? The  
8 stipulation applies to all counts? Let's do it that  
9 way.

10 MR. SLAVENS: Yeah. That is my  
11 understanding.

12 THE COURT: All right.

13 Mr. Arntz or Mr. Monta.

14 MR. ARNTZ: Yes, sir, that's correct.

15 MR. MONTA: Correct.

16 THE COURT: All right. Then the Court  
17 will accept into the record then, of course, this does  
18 or at least potentially has impact in terms of  
19 sentencing, the stipulation that Mr. Weston Lee Howe,  
20 Jr. was previously convicted in the Montgomery County  
21 Common Pleas Court of Case Number 86-CR-1349, on  
22 October the 29th, 1986, that being an offense of  
23 robbery and that specification is attached to the  
24 various counts for which Mr. Howe has been convicted.  
25 Specifically -- well, there is no specification as to

1 Count Two.

2 MR. SLAVENS: That's correct.

3 THE COURT: Mr. Slavens, that's why you  
4 didn't mention it.

5 It does apply then as to  
6 Counts Four, Five, and Six.

7 Now as it relates to -- and  
8 before we get to sentencing, does the defendant have  
9 any motions at this point or any matters to be brought  
10 to the attention of the Court before sentencing? This  
11 is not the actual sentencing itself. Mr. Arntz or Mr.  
12 Monta.

13 MR. ARNTZ: Only to indicate we have  
14 filed with the Court a motion with regard to the  
15 consecutive or concurrent nature of sentences. We, of  
16 course, ask the Court to take consideration of all the  
17 arguments made to that motion.

18 THE COURT: All right. Anything  
19 further than on behalf of the defendant?

20 MR. ARNTZ: No, sir, not at this time.

21 THE COURT: All right. Would counsel  
22 approach the bar and we'll proceed to sentence at this  
23 point in time.

24 Mr. Arntz, first of all, is  
25 there anything you want to say before the Court

1 pronounces sentence?

2 MR. ARNTZ: No, sir.

3 THE COURT: Mr. Monta?

4 MR. MONTA: No, Judge.

5 THE COURT: Mr. Howe?

6 THE DEFENDANT: No.

7 THE COURT: Anything at all that you  
8 want to say as to why the Court, why the Court should  
9 not proceed to sentence at this time?

10 THE DEFENDANT: No, not at all.

11 THE COURT: All right.

12 All right. Now, first of  
13 all, dealing with Count Six, which is the weapon under  
14 disability count, the Court is going to enter a  
15 finding of not guilty on the specifications attached  
16 thereto. We've discussed this matter at length. The  
17 Court believes that the previous conviction  
18 specification is nothing but a duplication of the  
19 substantive count and therefore is in effect the same  
20 and the finding of not guilty only applies to the  
21 specifications.

22 I believe the finding of  
23 guilty as to the weapon under disability charge was  
24 entered into the record at the time of the plea of no  
25 contest at the commencement of the trial but if it's

1 not contained therein, it will now reflect that the  
2 Court is making a finding of guilty as to the  
3 substantive count.

4 Now on this one limited  
5 issue, anything further for the record on behalf of  
6 the defendant from either Mr. Arntz or Mr. Monta?

7 MR. ARNTZ: No, sir. I don't think so.

8 MR. MONTA: Other than what's in the  
9 motion for sentence, which does include this argument,  
10 nothing further.

11 THE COURT: And I believe the issue was  
12 raised before the commencement of the trial by the  
13 defendant by a motion also.

14 MR. MONTA: That's true.

15 THE COURT: All right. With that then,  
16 the Court will proceed to sentence.

17 And as it relates to Count  
18 Two of the indictment, which is the aggravated murder  
19 charge, the Court will sentence the defendant to a  
20 term of life imprisonment pursuant to Section 2929.02  
21 of the Ohio Revised Code. That sentence to at least  
22 commence at the Corrections Reception Center.

23 As it relates to Count  
24 Four, which is the aggravated robbery charge, the  
25 Court will sentence the defendant to an indefinite

1 term of confinement of not less than 15 nor more than  
2 25 years at the Corrections Reception Center. That  
3 sentence to run consecutive with the sentence imposed  
4 in Count Two.

5 In Count Five, the  
6 aggravated burglary count, and I don't believe I'm  
7 mistating count numbers, but the count numbers are not  
8 the significant portion of the words, the actual name  
9 of the charge is what the Court is referring to. And  
10 the aggravated burglary conviction, the Court will  
11 sentence the defendant to an indefinite term of not  
12 less than 15 nor more than 25 years at the Corrections  
13 Reception Center. That sentence also to run  
14 consecutive with the aggravated robbery charge, and  
15 which is running consecutive with the aggravated  
16 murder charge.

17 In addition, in Count Six,  
18 the Court will sentence the defendant to a definite  
19 term of confinement of 1 and 1/2 years at the  
20 Corrections Reception Center, that also to run  
21 consecutive with each of the other sentences.

22 Now, Mr. Howe, you have the  
23 right to appeal the Court's sentence. You have 30  
24 days to file a notice of appeal. If you cannot afford  
25 a lawyer, one will be provided to you at no cost. If



1       you cannot afford the cost of a transcript, one will  
2       be provided to you at no cost.

3                               Do you understand your  
4       rights to appeal?

5               THE DEFENDANT:     Yes.

6               THE COURT:         A couple of things on this.  
7       I want to make it very clear in the record.  Each  
8       sentence, each, on each of the four counts to which  
9       the Court just imposed a sentence, they are running  
10      consecutive each with the other all running  
11      consecutive.  So there is no question in anybody's  
12      mind as to what the Court just said.

13                               Number two, on the issue of  
14      appeal, Mr. Howe, you do understand that you have that  
15      right, do you not?

16               THE DEFENDANT:     Yes.

17               THE COURT:         All right.  On that issue  
18      I've already consulted with your attorneys on this  
19      matter.  I assume that you cannot afford to hire a  
20      lawyer, is that a correct assumption?

21               THE DEFENDANT:     Yes.

22               THE COURT:         The Court will appoint a  
23      lawyer.  That has been agreed upon by your attorneys.  
24      They may want to discuss this with you.  I will make  
25      that appointment directly so that hopefully the person

1 can get over to see you in the county jail before you  
2 are actually removed from there.

3 With that then, anything  
4 further, Mr. Monta or Mr. Arntz?

5 MR. ARNTZ: We'll, be filing a notice  
6 of appeal on his behalf.

7 THE COURT: Mr. Slavens, anything  
8 further from the State?

9 MR. SLAVENS: Nothing further, your  
10 Honor. Thank you.

11 THE COURT: All right. We will stand  
12 in recess.


13  
14 (WHEREUPON, the proceedings were then  
15 concluded.)

16 \* \* \* \*

## C E R T I F I C A T I O N

I, Joyce L. Davenport, Registered Professional Reporter, Assistant Official Court Reporter, do hereby certify that the foregoing testimony, evidence and proceedings of court were taken by me in shorthand and thereafter reduced to typewriting by me, and the foregoing constitutes a true, correct, and complete transcript of the proceedings and the evidence introduced on FEBRUARY 22-26; MARCH 1-4 and MARCH 11, 1993, in Case No. 92-CR-1673, on the docket of the Common Pleas Court of Montgomery County, Ohio, a court of record.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of AUGUST, 1993.

  
Joyce L. Davenport, R.P.R.  
Ass't Official Court Reporter  
Notary Public  
Montgomery County Common Pleas  
Court